

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD

Service Appeal No. 1562/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
 MISS FAREEHA PAUL ... MEMBER (E)

Asad Saeed Ex-Head Constable No. 297, District Police Haripur (under transfer to District Upper Kohistan) R/O village Mirpur, Tehsil and District Haripur.(Appellant)

Versus

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.
4. District Police Officer, Upper Kohistan.(Respondents)

Mr. Muhammad Aslam Tanoli,
 Advocate ... For appellant

Mr. Asif Masood Ali Shah,
 Deputy District Attorney ... For respondents

Date of Institution.....	05.07.2023
Date of Hearing.....	22.07.2024
Date of Decision.....	22.07.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.06.2022 of the District Police Officer Upper Kohistan whereby appellant was dismissed from service and verbal order dated 30.05.2023 of the Regional Police Officer, Hazara Region, Abbottabad whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, both the orders, dated 24.06.2022 and 30.05.2023, might be set aside and appellant be reinstated into service from the date of dismissal, with all consequential back benefits.



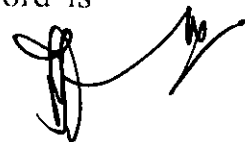
provided with opportunity of personal hearing and was condemned unheard which was against the principle of natural justice. He further argued that the allegations were totally incorrect and the leave availed by the appellant was due to his illness. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was transferred from District Haripur to District Upper Kohistan on 11.02.2022 but he did not make his arrival there and absented himself till his dismissal from service on 24.06.2022. Disciplinary proceedings were initiated against him. Charge sheet was issued to him on 01.03.2022 and Mr Shah Nawaz Khan DSP Circle Dassu was appointed as Inquiry Officer. The Inquiry Officer delivered the charge sheet to the appellant through DPO Haripur to which he did not submit any reply. The Inquiry Officer submitted his report and found the appellant as guilty of misconduct. He further argued that final show cause notice was issued to him by the competent authority on 18.06.2022 but he did not respond. As the appellant failed to appear and further failed to submit any documentary evidence in his defence, hence he was awarded punishment of dismissal from service under the Khyber Pakhtunkhwa Police Rules, 1975. After dismissal, when the appellant submitted application to the District Police Officer, Upper Kohistan on 10.04.2023 regarding provision of dismissal order, same was allowed and granted accordingly after which he filed departmental appeal before the Regional Police Officer, Hazara Region, Abbottabad who called the appellant in Orderly Room on 30.05.2023 and heard him in person He was



given reasonable opportunity to defend himself but he failed to advance any justification, hence his departmental appeal was filed/rejected. He further argued that the rejection order was provided to the appellant as was evident from the fact that he filed Revision Petition before the Provincial Police Officer Khyber Pakhtunkhwa. He further argued that the plea of the appellant that he submitted application for provisions of copy of rejection order was totally false, as no marking of any officer existed on that application. He requested that the appeal might be dismissed.

6. Through the instant service appeal, the appellant had impugned order dated 24.06.2023 vide which he had been dismissed from service on the ground of absence from duty. Arguments and record presented before us show that the appellant remained absent from duty because of illness. He attached a report dated 07.02.2022 at page 13 of his appeal, which indicated that he was diagnosed with Covid 19. After his recovery from Covid 19, he got diagnosed with T.B and remained under treatment for that disease. No proper application seeking leave and getting the same sanctioned by the competent authority was available on record and when learned counsel for the appellant was confronted with the question whether any application was submitted by the appellant, he referred to two Roznamchas dated 07.02.2022 and 08.02.2022 according to which the appellant was not feeling well. During the same period he was transferred from District Haripur to District Upper Kohistan on 12.02.2022, which, according to him, was complied and he submitted a departure report dated 13.02.2022 which was conveyed by the DPO Haripur to DPO Upper Kohistan on 23.02.2023. But after that, record is





silent whether he joined the duty at Upper Kohistan or not. As stated by the respondents, the appellant did not join his duty at Upper Kohitan, therefore, he was proceeded against departmentally and inquiry was initiated against him. As the appellant did not join the inquiry proceedings, he was proceeded against ex-parte and was removed from service through the impugned order dated 24.06.2022.

7. After going through the arguments and record, it is clear that the appellant was not fully associated in the inquiry. He was not given any opportunity to present his case and defend himself. It would have been in the fitness of the matter to associate the appellant in the inquiry and provide him every opportunity of defence for a fair trial before imposing major penalty of dismissal from service.

8. In view of the above discussion, we allow this appeal by setting aside the impugned order and refer the case to the respondents for conducting denovo inquiry. The appellant is reinstated into service for the purpose of denovo inquiry. Respondents are directed to conduct the denovo inquiry under the rules and provide the appellant every opportunity of fair trial. The denovo inquiry should be completed within sixty days of the receipt of this judgment. Cost shall follow the event. Consign.

9. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 22nd day of July, 2024.*


(FARZEELA PAUL)
Member (E)
(Camp Court, Abbottabad)



(RASHIDA BANO)
Member (J)
(Camp Court, Abbottabad)


SA 1562/2023

22nd July, 2024 01. Mr. Muhammad Aslam Tanoli, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, we allow this appeal by setting aside the impugned order and refer the case to the respondents for conducting denovo inquiry. The appellant is reinstated into service for the purpose of denovo inquiry. Respondents are directed to conduct the denovo inquiry under the rules and provide the appellant every opportunity of fair trial. The denovo inquiry should be completed within sixty days of the receipt of this judgment. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 22nd day of July, 2024.*


(FARIEHA PAUL)
Member (I)
(Camp Court, Abbottabad)


(RASHIDA BANO)
Member (J)
(Camp Court, Abbottabad)

Fazle Subhan PS